

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
BELLSOUTH BSE, INC. and )  
BELLSOUTH LONG DISTANCE, INC. )  
For Approval of Merger and to )  
Transfer Certificate. )  
\_\_\_\_\_ )

DOCKET NO. 04-0076

DECISION AND ORDER NO. 21084

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

Filed June 25, 2004  
At 11:00 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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DECISION AND ORDER

I.

Introduction

BELLSOUTH BSE, INC. ("BSE") AND BELLSOUTH LONG DISTANCE, INC. ("BSLD") (collectively "Applicants"), by a joint notice filed on May 12, 2004, informs the commission of the planned merger of BSE into BSLD effective on or before June 30, 2004 and contingent upon approval by all appropriate regulatory agencies. Moreover, in the interim, BSE requests that its local exchange certificate be transferred to BSLD effective immediately. We will treat this joint notice and request to transfer its local exchange certificate as an application for commission approval: (1) for BSE to merge into BSLD, effective on or before June 30, 2004, and (2) to transfer BSE's certificate of authority ("COA") to BSLD, pursuant to Hawaii Revised Statutes ("HRS") § 269-19 ("Application").

Applicants served copies of the application on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate, through its position statement filed on June 3, 2004, indicates

that it does not object to the approval of the proposed merger and transfer of COA, described above, subject to one qualification, discussed below.

## II.

### Background

#### A.

##### Overview of Subject Entities

BSE and BSLD are Delaware corporations with principal offices located in Atlanta, Georgia. Both companies are wholly-owned subsidiaries of Bell South Corporation, and are each authorized to provide intrastate telecommunications services within the State of Hawaii (the "State") as resellers.<sup>1</sup>

#### B.

##### Description of Proposed Transactions

Applicants propose to complete a series of transactions. Regarding the proposed merger, BSE will be merged into BSLD, effective on or before June 30, 2004. As a result of the merger, BSE's shares will be cancelled, and Bell South Corporation will continue to own 100 per cent of the outstanding common stock in BSLD. In addition, BSE will cease operations as a separate

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<sup>1</sup>Decision and Order No. 15564, filed on May 7, 1997, in Docket No. 97-0053 (BSLD's COA to operate within the State as a reseller); and Decision and Order No. 16001, filed on October 6, 1997, in Docket No. 97-0336 (BSE's COA to operate within the State as a reseller).

operating company and all services will thereafter be provided by BSLD. Therefore, in the interim, BSE also requests that its COA be transferred to BSLD immediately.

Both BSE and BSLD currently share common management. Thus, Applicants represent that "there will be no long term implication on operations within Hawaii upon the merger of these two entities." Applicants further represent that because BSE currently has no customers in Hawaii, "there will be no customers affected by this merger and notice will not be required."

C.

Consumer Advocate's Position

As stated in its June 3, 2004 position statement, the Consumer Advocate "recognizes the entry of many long distance telecommunications service providers in the Hawaii market." The Consumer advocate further asserts that "[t]he market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the proposed transactions," described above. As such, the Consumer Advocate states that it does not object to commission approval of the proposed merger and transfer of BSE's COA to BSLD, pursuant to HRS § 269-19, provided a copy of the merger agreement is submitted to the commission and the Consumer Advocate for their records within thirty (30) days of the issuance date of this decision and order.

### III.

#### Discussion

##### A.

#### Proposed Merger

HRS § 269-19 provides, in relevant part, that "[n]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means directly or indirectly, merge or consolidate with any other public utility corporation, without first having secured from the public utilities commission an order authorizing it so to do." The proposed merger, described in this docket, falls under our purview under HRS § 269-19.

Nonetheless, HRS § 269-16.9 also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, Hawaii Administrative Rules ("HAR") § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly Applicants' representations, we find the following: (1) much of the telecommunications services currently provided by BSE and BSLD are competitive; (2) BSE and BSLD are non-dominant carriers in

Hawaii<sup>2</sup>; (3) the proposed merger and related transactions are consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS § 269-19, to the extent applicable, regarding the proposed merger.<sup>3</sup> Similarly, we also find it in the public interest to waive the applicability of HAR § 6-61-17 and 6-61-105 to the extent that the Application in this docket is not in compliance with those rules. Thus, for purposes of considering this Application, we will not require the information and/or documents (i.e., written verification) normally required upon the filing of such Application. The commission, nonetheless, reminds Applicants that all future applications regarding any mergers or transfer of assets under HRS § 269-19 should comply with the applicable rules. For example, all applications and other

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<sup>2</sup>HRS § 269-16.92 provides that "[n]o telecommunications carrier shall initiate a change in a subscriber's selection or designation of a long-distance carrier without first receiving: (1) a letter of agency or letter of authorization; (2) an electronic authorization by use of a toll-free number; (3) an oral authorization verified by an independent third party; or (4) any other prescribed authorization." In this docket, because Applicants represent that BSE has no Hawaii customers, we find and conclude that HRS § 269-16.92 is inapplicable.

<sup>3</sup>At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS § 269-19 or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

pleadings that initiate a proceeding before the commission must be verified in accordance with HAR § 6-61-17.

Notwithstanding the commission's waiver of the requirements noted above, the commission agrees with the Consumer Advocate's recommendation that certain information should be provided to the commission and the Consumer Advocate subsequent to the issuance of this decision and order. Therefore, we will adopt the Consumer Advocate's recommended condition and direct Applicants to submit a copy of the merger agreement to the commission and the Consumer Advocate for their records within 30 days of the date of this decision and order.

B.

Proposed Transfer of BSE's COA to BSLD

HRS § 269-19 also specifically provides, in relevant part, that: "No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do."

In the interim, BSE requests that its COA be transferred to BSLD. Since BSLD already has a COA to operate as a reseller of intrastate telecommunications services within the State, the commission finds such request to be unnecessary. However, because Applicants represent that BSE will cease operations as a separate operating company on or before June 30, 2004, we find it necessary to instruct BSE to file a written request with the commission to

voluntary surrender its COA within thirty (30) days of the date of this decision and order. If applicable, BSE shall also pay any and all outstanding public utility fees, pursuant to HRS § 269-30 and file any and all outstanding annual financial reports, pursuant to HAR § 6-80-91.

#### IV.

##### Orders

##### THE COMMISSION ORDERS:

1. The requirements of HRS § 269-19, to the extent applicable, are waived with respect to the proposed merger, subject to the applicable filing conditions described in Ordering Paragraph 3 below.

2. To the extent that the Application does not contain all of the information required under either HAR § 6-61-17 and HAR § 6-61-105, the applicability of those sections is waived, subject to the applicable filing conditions described in Ordering Paragraph 3 below.

3. Within 30 days from the date of this decision and order, Applicants, collectively and/or BSE or BSLD, independently, shall submit the following to the commission and the Consumer Advocate:

- a. A copy of the merger agreement resulting in the merger of BSE into BSLD, effective on or before June 30, 2004; and
- b. A written request to voluntarily surrender BSE's COA including if applicable, the payment



of any and all outstanding public utility fees, pursuant to HRS § 269-30, and the filing of any and all outstanding annual financial reports, pursuant to HAR § 6-80-91.


4. Upon receipt of this decision and order, BSLD shall promptly file its revised tariff, incorporating any changes necessary to assume the services of BSE. BSLD shall file its tariff in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariff shall comply with the provisions of HAR Chapter 6-80. In the event of a conflict between any tariff provision and State law, State law shall prevail.


5. An original and eight (8) copies of the revised tariff shall be filed with the commission with two (2) additional copies served on the Consumer Advocate. BSLD shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

6. Applicants shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii this 25th day of June, 2004.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel

04-0076.eh

CERTIFICATE OF SERVICE

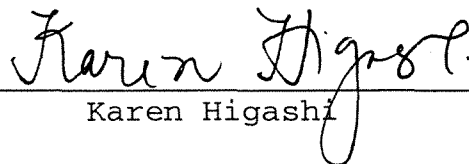
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21084 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

MARIO SOTO, PRESIDENT  
BELLSOUTH BSE, INC.  
400 Perimeter Center, Suite 400  
Atlanta, GA 30346

THOMAS M. FORTE, CONSULTANT  
TECHNOLOGIES MANAGEMENT, INC.  
P.O. Box 200  
Winter Park, FL 32790

HARRIS R. ANTHONY, ESQ.  
GENERAL COUNSEL  
BELLSOUTH LONG DISTANCE, INC.  
400 Perimeter Center, Suite 400  
Atlanta, GA 30346

  
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Karen Higashi

DATED: June 25, 2004